

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

MAURICIO L.,

Claimant,

vs.

NORTH LOS ANGELES REGIONAL  
CENTER,

Service Agency.

OAH Case No. L 2006051071

**DECISION**

This matter came on regularly for hearing before Samuel D. Reyes, Administrative Law Judge, Office of Administrative Hearings, on November 27, 2006, in Van Nuys, California.

Claimant's father represented Claimant.

Stella Dorian represented North Los Angeles County Regional Center (NLACRC or Service Agency).

Oral and documentary evidence was received at the hearing and the matter was submitted for decision.

**ISSUE**

Whether Service Agency should fund two 60-minute sessions of gymnastics in lieu of occupational therapy and social skills training.

**FACTUAL FINDINGS**

1. Claimant is a nine-year-old Service Agency consumer by reason of his diagnoses of autism and mental retardation. He resides with his biological parents.

2. Claimant can tend to most of his self-care tasks with minimal supervision. He can eat with meal utensils, but prefers to use his hands. He is toilet-trained, but tends to wait until the last minute and needs prompts to use the toilet. He can brush his teeth and hair, wash his hands and face, and bathe with minimal prompts and supervision. He can dress himself but needs help with buttoning and snapping. He assists with household chores such as picking up after himself, putting clothes in the hamper, rinsing the dishes, and filling the washing machine with detergent.

3. Claimant engages in tantrums with a frequency of zero to three times each week, yelling, crying, slamming doors, and throwing objects. He becomes easily frustrated and acts out. He resists transitions and certain tasks, such as homework.

4. Claimant has been described as “clumsy” and lacking safety awareness. He often trips over his own feet and bumps into furniture. He appears oblivious to his surroundings and space. He may lie down on the floor regardless of the location, and actually did so during an IPP meeting. His parents also report that he becomes very nervous, particularly if he believes he has done something wrong.

5. Claimant attends a mainstream fourth grade class at his local school district. He is performing at grade level, but typically works slower than his peers. Occupational therapy, behavior, language and speech, adapted physical education, resource, and full inclusion consultants assist Claimant in school as needed.

6. Claimant has been attending Canyon Country Gymnastics since March 2002. He attends twice each week and the cost is \$17.50 per session. He attends a regular class open to all children and does not receive any special accommodation or adaptive device to participate. The instructors do not have any specialized training in the needs of children with disabilities.

7. According to his father, this service was offered as a creative way to address Claimant’s sensory and motor issues. As reported in the latest IPP, resulting from a meeting on May 3, 2005, his mother told the IPP team that the service had been offered to address Claimant’s occupational therapy needs and that it helps improve sensory/motor skills and integration, and that it increases his understanding of his body’s relationship to his environment. The service coordinator wrote in the IPP her belief that the service was offered as a weekly organized activity as an alternate respite option. However, neither an earlier IPP nor any documentation to explain the reason(s) for initial funding were available at the time of hearing.

8. At the May 2005 IPP meeting, Service Agency agreed to fund physical therapy and occupational therapy assessments to evaluate Claimant’s needs in these areas. The IPP contains the following statement, which was apparently agreed to by the team: “However, mom agreed to terminate gymnastics contingent upon having an occupation[al] therapy assessment

conducted to determine [Claimant]'s service needs. If after the assessment it is determined that his needs are clinically based, parents to pursue their private medical insurance for services as they understand that this is available as a generic resource." The IPP contains the following desired outcome: "[Claimant] will decrease his tendency to trip/fall and bump into objects by increasing his sense of body awareness 80% of the time."

9. An occupational therapy evaluation was conducted by "Therapy In Action" on August 8, 2005. Jessica Bedrinana, M.A., O.T.R./L., concluded that Claimant demonstrated weakness in attention and body awareness that negatively influenced his safety awareness in the community and at home. He displayed weakness in in-hand manipulation and tactile discrimination skills that affected his ability to successfully complete functional fine motor tasks involved in self-care and other childhood occupations such as playing with game boards and legos. She recommended that Claimant receive clinic-based occupational therapy for 60 minutes once per week for six months. In her opinion, goals should address attention, body awareness, safety skills, fine motor and self-care skills.

10. After the Therapy In Action assessment, Service Agency informed Claimant's parents that funding for gymnastics would be discontinued in favor of clinic-based occupational therapy funded by the family's private health insurance.

11. A new IPP meeting was held on April 4, 2006, but the parties failed to resolve their differences.

12. Continued funding was formally declined by letter dated May 8, 2006, and Claimant's mother filed a fair hearing request. At an informal meeting on July 3, 2006, she stated that gymnastics affords Claimant, an only child, the opportunity to interact with other children. Service Agency declined to fund the service to address social skills deficits, deferring to the IPP process to gather information regarding Claimant's needs in the area of socialization.

13. On August 21, 2006, an IPP meeting was held between Claimant's mother, Claimant's service coordinator, and the service coordinator's supervisor. Claimant's mother reported that he does not engage his peers outside of structured activities. He prefers to play by himself and does not initiate conversations with peers. The meeting failed to produce agreement regarding an assessment or service approach. In the parents' view, the available social skills vendors do not provide an appropriate service because they serve lower-functioning consumers.

14. On September 27, 2006, Claimant was evaluated by Patricia Cook-Chambi, a Kaiser Permanente physical and occupational therapist. She concluded that Claimant is calmer and better able to focus when receiving consistent, daily heavy work/aerobic activities. She offered to provide parent education for a home exercise program and suggested continued participation in community sporting activities, including gymnastics. The private insurer declined to fund physical or occupational therapy.

15. Claimant's parents continue to assert that gymnastics provides a therapeutic benefit, as it helps Claimant with sensory motor skills/integration and increases his understanding of his body's relationship to the environment. His father testified that Claimant has progressed over the years, improving coordination and helping him understand his body. The fact that classes have a routine helps keep Claimant on task. Claimant talks to his peers in the class and they cheer each other during the rope climbing activity, which each child undertakes while the others watch.

16. Claimant's coach for the past year wrote a letter stating that Claimant has increased his strength, balance, coordination, agility, and flexibility.

17. Claimant plays little league soccer. His father, who is an assistant coach on the team, testified that he constantly watches Claimant and intervenes to settle him down if he becomes too stimulated. His father is also teaching him to play basketball.

18. Claimant's parents also provided a psychological assessment and two letters from B.J. Freeman, Ph.D., in support of their claim. Dr. Freeman noted that Claimant's primary deficits remain in the social communication areas. In her opinion, social skills training would be more effective if taught in connection with an activity Claimant enjoys and excels in, such as gymnastics. Dr. Freeman also encouraged the parents to work with Service Agency to obtain training and in-home behavioral intervention to increase Claimant's independence and socialization.

19. John G. Youngbauer, Ph.D., Service Agency's supervisor of behavioral services, observed Claimant during two separate gymnastics classes, on September 14 and November 16, 2006. Claimant seemed to enjoy the activities and was as proficient as most other children. Dr. Youngbauer saw minimal interaction, as most children worked on individual exercises assigned by the instructor, and did not see any formal social skills training. He agreed with Dr. Freeman's opinion that social skills are most effectively taught in conjunction with an activity the consumer enjoys, but did not find social skills instruction in the gymnastics class to warrant continued Regional Center funding. In his opinion, while gymnastics may have helped Claimant with coordination, balance, and posture, physical growth and maturation have also played a part. He would require more rigorous and scientific evaluation of the benefits of gymnastics for Claimant.

20. Service Agency questions the therapeutic benefit of gymnastics since Claimant continues to struggle with body awareness and clumsiness despite four years of gymnastics.

### LEGAL CONCLUSIONS

1. In enacting the Lanterman Act, Welfare and Institutions Code section 4500 et seq., the Legislature accepted its responsibility to provide for the needs of developmentally

disabled individuals and recognized that services and supports should be established to meet the needs and choices of each person with developmental disabilities. (Welf. & Inst. Code § 4501.)

2. The Lanterman Act gives regional centers, such as Service Agency, a critical role in the coordination and delivery of services and supports for persons with disabilities. (Welf. & Inst. Code § 4620 et seq.) Thus, regional centers are responsible for developing and implementing individual program plans, for taking into account consumer needs and preferences, and for ensuring service cost-effectiveness. (Welf. & Inst. Code §§ 4646, 4646.5, 4647, and 4648.)

3. Welfare and Institutions Code section 4512, subdivision (b), defines the services and supports that may be funded, in pertinent part, as follows:

“Services and supports for persons with developmental disabilities means specialized services and supports or special adaptations of generic services and supports directed toward the alleviation of a developmental disability or toward the social, personal, physical, or economic habilitation or rehabilitation of an individual with a developmental disability, or toward the achievement and maintenance of independent, productive, normal lives. The determination of which services and supports are necessary for each consumer shall be made through the individual program plan process. The determination shall be made on the basis of the needs and preferences of the consumer, or where appropriate, the consumer’s family, and shall include consideration of a range of service options proposed by individual program plan participants, the effectiveness of each option in meeting the goals stated in the individual program plan, and the cost-effectiveness of each option.”

Thus, the statute requires regional centers to provide “specialized services and supports or special adaptations of generic services,” taking into account consumer needs and desires as well as cost-effectiveness.

4. The gymnastics program in question is not a “specialized service,” but rather, is the same program offered to children without disabilities. Nor does Claimant receive a special adaptation or accommodation to enable him to participate in the program. The requested service, therefore, does not fall within the definition of a “service” or “support” under section Welfare and Institutions Code section 4512, subdivision (b).

5. Gymnastics seems to have helped Claimant’s coordination, balance, and posture, but, as noted by Dr. Youngbauer, so have physical growth and maturation. In order to justify continued funding of gymnastics in lieu of occupational therapy or social skills training, more specific and persuasive evidence would have to be presented regarding specific, measurable, goals being provided by the service.

Dr. Freeman's opinion is insufficient to warrant continued funding. While teaching social skills through an enjoyable activity has support in the scientific literature, social skills training is not a goal of the class Claimant attends. The level of social interaction in which Claimant engages in the gymnastics class, which is minimal, can be more effectively attained in the team sport of soccer in which Claimant already participates.

Accordingly, gymnastics has not been shown to constitute a cost-effective means to achieve occupational therapy or social skills training goals.

6. Claimant does have sensory/motor needs, as identified in the IPP and the Therapy In Action assessment. Therapy In Action recommended 60-minutes of clinic-based occupational therapy for six months. However, the generic resource identified by Service Agency to fund this service, Kaiser Permanente, has declined to fund the service. In light of Claimant's sensory/motor needs and the fact that the gymnastics class is the only service presently being funded that seeks to address those needs, its funding will be authorized, on an interim basis not to exceed three months, to afford the parties the opportunity to discuss, through the IPP process, appropriate services and supports to address those needs.

7. Except as set forth in legal conclusion number 6, Service Agency need not continue to fund two 60-minute sessions of gymnastics in lieu of occupational therapy and social skills training, by reason of factual finding numbers 1 through 19 and legal conclusion numbers 1 through 6.

### ORDER

Claimant's appeal is denied, except as partially granted in accordance with legal conclusion number 6.

Dated:\_\_\_\_\_

Samuel D. Reyes  
Administrative Law Judge  
Office of Administrative Hearings

### NOTICE

This is the final administrative decision in this matter and both parties are bound by this Decision. Either party may appeal this Decision to a court of competent jurisdiction within 90 days.